UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

September 5, 2002

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:54 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, and Gordana Swanson were present.

Item #1. Approval of the Minutes of the August 9, 2002, Commission Meeting.

Commissioner Knox moved that the minutes be adopted.

There being no objection the minutes were approved.

Item #2. Public Comment

There was no public comment.

Item #3. Repeal and Reenactment of Regulation 18225.7, Defining Expenditures Coordinated With Candidates.

Senior Commission Counsel Lawrence Woodlock stated that the draft regulation incorporated suggestions made by the Commission at its July 2002 meeting. He explained that there were up to seven decisions yet to be made with regard to the regulation.

Mr. Woodlock explained that a comment letter had been received from Lance Olson regarding this regulation, which was supported by another letter received from Charles Bell. The Olson letter suggested that regulation 18225.7 is broader that it should be. Mr. Woodlock disagreed, noting that staff deliberately wrote the regulation to pull in any and all expenditures that are made at the behest of a candidate. He explained that expenditures coordinated with a candidate have been considered contributions, even when they do not include words of express advocacy, since 1976. Express advocacy language is imbedded in the definition of independent expenditure, which is the type of communication that the proposed Olson regulation would be limited to.

Mr. Woodlock stated that it would be a mistake to write a narrow regulation like the one proposed by Mr. Olson. He noted that most campaign ads do not use words of express advocacy. He pointed out that the court, in *Christian Coalition*, used the "expensive, gauzy candidate profiles produced for television" to illustrate precisely why a coordination regulation cannot be limited to communications that contain words of express advocacy. The regulation proposed by

the Olson firm does not provide that expenditures on those "gauzy" candidate profiles are contributions when coordinated with a candidate. Staff viewed this as a major loophole. Mr. Woodlock explained that disguised contributions in any form have been considered subject to the "coordinated" regulations.

Mr. Woodlock stated that, to promote the alternative regulation, the letter incorrectly stated that the staff regulation reaches absurd results in a hypothetical situation. However, he noted that the claim overlooks the fact that the staff regulation expressly incorporates exceptions to the definition of "contribution." Staff reached the correct conclusion in the hypothetical situation posed in the Olson letter because § 82015(b)(2) provides that a payment is not a contribution if it is clear from the surrounding circumstances that the payment is unrelated to the candidate's candidacy. The staff regulation would reach the same result that the Olson letter suggests is correct.

Mr. Woodlock stated that the Olson letter criticized the staff regulation for its use of presumptions. He noted that presumptions have been part of the law in California since the adoption of regulation 18225.7. Additionally, the *Davis* advice letter stated presumptions. There is no argument in the Olson letter as to why presumptions should be taken out at this time.

Chairman Getman questioned whether the Olson regulation is stronger than the staff regulation, because the latter includes a rebuttable presumption that coordination exists and the Olson regulation turns it into an absolute rule.

Mr. Woodlock responded that staff drew the rebuttable presumptions in areas that would cause legal difficulties if they were not rebuttable. The Olson regulation may create constitutional or other legal difficulties. He noted that he would need more time to study the Olson proposal.

Chairman Getman questioned why, if an independent expenditure is based on information provided by the candidate about the candidate's current election needs or plans not generally available to the public, there should not be an absolute rule that it is coordination.

Mr. Woodlock questioned how that could be applied if there was evidence that they never talked to each other.

Chairman Getman questioned whether, if the regulation was intended to make it possible to sift through the enforcement actions, then the hypothetical situation would be so remote that it might be better to have an absolute rule that would cover 99.9% of the situations. That would make it very simple for enforcement purposes.

Mr. Woodlock responded that the Olson letter seemed to take issue with presumptions and that the philosophical bias of the letter suggests that Mr. Olson does not intend to make the regulation more rigorous. If Mr. Russo thought that the presumptions of the Olson letter would serve better than the presumptions of the staff regulation, then Mr. Woodlock believed it should be given serious consideration.

Mr. Russo stated that the most important thing from the enforcement standpoint is to have at least the rebuttable presumptions in force, noting that it has been difficult for enforcement to differentiate between contributions and independent expenditures. Conversations are generally made between two parties and there is little evidence to help determine what was coordinated. This problem exists for all enforcement agencies. A conclusive rule, rather than a rebuttable presumption, is easier for enforcement to deal with. He noted that staff has not had enough time to fully consider the implications of the Olson proposal. He did not want to have a regulation that could not be defended in the courts.

Chairman Getman stated that the issue of presumption vs. conclusion is an important one, and that staff should have the opportunity to fully consider it.

Mr. Woodlock added that the question may still be about scope of the regulation because the extent of the presumptions may be influenced by the scope of the regulation. The Olson proposal would drastically shrink the potential application of the regulation. He suggested that conclusive presumptions may be more comfortable when they apply only to one small form of communication, and less comfortable when applied to *Buckley's* "disguised contributions in general."

Chairman Getman clarified that the regulation proposed by the Olson firm would simply distinguish an independent expenditure from anything else. In order to be an independent expenditure, it must expressly advocate the election or defeat of a clearly identified candidate. Under the staff's regulation, it would cover all coordinated expenditures.

In response to a question, Mr. Woodlock stated that other coordinated expenditures would include candidate profiles that do not include words of express advocacy. Under the Olson proposal, those profiles would not be subject to the regulation. The staff proposal would consider the profiles to be a contribution to a candidate, even if they did not expressly advocate the election or defeat of the candidate.

General Counsel Luisa Menchaca clarified that it might not be considered a contribution if it met the exception rules of another statute or regulation. She agreed that scope is the key issue. Staff took various words from the contribution statute or § 85500 and attempted to create a definition that would work by fitting it under the term "coordination." If the scope is narrower, staff would need more time to look at the existing regulation 18225.7 to determine whether it would create parallel regulations dealing with "at the behest," independent expenditures, and § 85500. Staff would need to explore how the regulations would work together. Initially, staff wanted to set out one regulation that would establish rules that would be applicable across-the-board, while recognizing that existing statutory or regulatory exceptions would remove some of those contributions from the "coordination" rules. She recommended that staff study the issues further so that they can provide guidance to the public, and come back to the Commission with one or two regulations. If the Commission chose to narrow the scope of the regulation, staff would need to notice the regulation again.

Mr. Woodlock noted that the Olson letter does not present any principled basis for distinguishing "coordination" relating to communications that contain words of express advocacy versus coordination among the same parties on communications that do not contain words of express advocacy. If staff were to narrow the regulation to deal only with the subject matter proposed in the Olson regulation, and then draft another regulation dealing with the other forms of "disguised contributions," the second regulation would be identical to the first. He saw no need for two regulations.

Diane Fishburn, from Olson Hagel and Fishburn, agreed that scope is the key issue, noting that it would encompass all of the statutory and current regulatory references to "at the behest" and "any other types of expenditures." She believed that the focus of the regulation was to distinguish between expenditures made totally independent of the candidate and those which were not. She stated that regulation 18215 provides exceptions to the definition of "contribution," including exceptions relating to communications dealing with candidates or coordinated with candidates. It is confusing to determine which regulation covers which expenditure.

Ms. Fishburn suggested that, if the Commission chose the broader approach to defining "at the behest" for all purposes, then the other regulations and statutes that use the term should be considered. Section 85310 uses the term "at the behest" but it is not referenced in the proposed regulation. She questioned whether the definitions would apply for that statute as well.

Ms. Fishburn believed that too many issues would be addressed in a single regulation. "At the behest" was going to be a factual determination, and she believed the Commission should use the same approach taken by the Commission in regulation 18215, spelling out specific and common exceptions. She asked whether making a contribution to a candidate would preclude someone from making an independent expenditure for that candidate, as an example for the types of questions the regulation should address.

In response to a question, Ms. Fishburn stated that regulation 18215, which provides that payments made at the behest of a candidate are contributions, also provides a series of exceptions to that rule for various types of expenditures.

Chairman Getman noted that regulation 18215 did not define "at the behest." It defined the circumstances under which, even if express advocacy was not in the communication, a person may be considered to be making a contribution to a candidate. She read from § 18215(a)(c)(4), a section addressing payments made at the behest of a candidate, and stated that Mr. Woodlock was correct. Payments for communications that do not expressly advocate the election or defeat of a candidate, but discuss the candidate's qualifications for office before an election campaign, and are done at the behest of a candidate would be a contribution to the candidate.

Ms. Fishburn did not agree, noting that a communication that meets the criteria of regulation 18215(c), and is made at the behest of a candidate is not a contribution to the candidate according to the provisions of the regulation.

Chairman Getman responded that if it does not meet all of the criteria, it is a contribution. It can be a contribution even if it does not contain express advocacy.

Ms. Fishburn agreed.

Chairman Getman summarized that a communication that does not contain express advocacy and does not meet all of the exceptions would be a contribution if made at the behest of a candidate. In that case, it would be important to understand what "at the behest" means, and the answer would be the same as the answer that is in staff's proposed regulation.

Ms. Fishburn agreed that it incorporates some of the language in current regulation 18225.7. However, she suggested that the scope of the regulation should be limited to independent expenditures. She questioned when an express advocacy communication is made "at the behest," noting that non-express advocacy communications would be covered under 18215. She suggested that regulation 18215 could be amended to more specifically deal with the situations addressed by staff. If the Commission adopts a global regulation defining all circumstances under which any payment is made at the behest of a candidate, then it should reconsider regulations 18215 and 18225. That undertaking would be huge, and much of it is already covered under existing regulations. Those regulations may not answer every situation or satisfy every concern.

Chairman Getman responded that staff put all of it in one regulation because they believed that separate regulations for the different types of communication would all look the same. She asked if there was some reason why they would not look the same.

Ms. Fishburn stated that independent expenditures on an express advocacy communication is an area where constitutional parameters would need to be considered. There would be situations where established law and specific statutes relate to the definition of an independent expenditure and the reporting thereof. There would be overlap in the determinations of whether a payment is a contribution if it is not an independent expenditure. It may or may not be a contribution, depending on whether it qualifies as an exception to the definition of contribution. The regulations must be consistent with each other, but she did not believe that it would be helpful to try to define all aspects of what "at the behest of a candidate" means for all expenditures in the context of one regulation, given the existing regulations and statutes.

Chairman Getman noted that Ms. Fishburn had not provided a reason indicating why the proposed staff regulation would not work. She asked whether Ms. Fishburn would support use of the Olson firm's regulation in connection with the scope provided by staff.

Ms. Fishburn responded that subdivision (c) would not work because it addressed when independent expenditures are not independent. It would not make them contributions if they qualified as one of the exceptions under regulation 18215. The focus of the Olson proposal was independent expenditures, and presumes a communication of some sort to the public. The staff proposal includes all expenditures, including those that are not communications.

Chairman Getman responded that it would require adding the language proposed by Mr. Woodlock, providing that it would be subject to any exceptions provided by regulation 18215.

Ms. Fishburn agreed, but said it is confusing to refer to one regulation for a list of circumstances where the expenditures are independent or not independent, and then to refer to another regulation to determine whether there are exceptions to that.

Chairman Getman pointed out that the regulations work that way currently. This would replace a regulation that attempts to define "at the behest" with another regulation that does a better attempt to define "at the behest."

Ms. Fishburn responded that the scope of the regulation is "at the behest," but the exceptions to them are found in advice letters or in other regulations, and she contended that it would lead to massive confusion. It involved a very complex area and she suggested that the regulation encompasses much more than it needs to in terms of getting at the very critical issue of determining when an independent expenditure communication has been made independently of the candidate. It would be very difficult to create one global test that would include all possible expenditures. It would draw in other statutes and regulations and create confusion. She welcomed the opportunity to work with the staff to make the regulation work. She noted that part of the confusion involved a current regulation that addresses part of the issue, but is not being considered by the Commission with this issue. The two regulations should be looked at together, as well as regulation 18225.

Chairman Getman stated that staff held the regulation over from a previous meeting and conducted another Interested Persons meeting to try to address any possible issues before bringing the regulation to the Commission for final adoption. The Olson draft presented some good ideas, but the regulatory process provided ample opportunity for them to make these proposals much earlier. She stated that it was an inefficient use of agency resources and burdensome on staff, and was particularly troubling during an election year. Ms. Fishburn was asking for more time to study the issue, but in fact had months already.

In response to a question, Ms. Menchaca agreed that the input was helpful. Contribution limits and reporting issues combined to create the need for additional work on the regulation. She believed that it will guide the public for a long time, and, while staff had hoped to have the regulation in effect for the current election, she believed it was important to craft a regulation that would satisfy the needs of both the Commission and the regulated community.

Mr. Woodlock commented that Ms. Fishburn did not provide a reason to multiply regulations when the goal is simply to define conduct that is considered coordination. He researched all of the statutes and regulations and was not able to find justification for multiple regulations. He noted that people are not always sure whether a communication includes express advocacy. He saw no principled basis for distinguishing types of communication in the rules for coordination.

Chairman Getman agreed, but was not comfortable trying to piece together two regulations during the meeting.

Mr. Woodlock agreed that some of the language of the Olson proposal was good, and that the regulation should not be pieced together at the meeting. He argued that narrowing the scope to a single kind of election communication would not be a good idea, and asked the Commission for direction on the scope issue.

Ms. Menchaca agreed that Mr. Woodlock's language was good, but suggested that staff should demonstrate to the Commission why three regulations would all look the same. She agreed that the scope should not be narrowed.

Chairman Getman suggested that staff be allowed to address the scope issues, and that the Commission provide guidance regarding language issues and differences between the two regulations. It would not be considered again by the Commission until November.

Commissioner Downey stated that the Commission must do as the Chairman proposed. The staff proposal seemed clear, but the Olson proposal presented alternatives that should be further researched. He agreed with the Chairman's observation that the issues should have been brought to the FPPC's attention much earlier in the process. He asked for guidance from staff regarding the scope issues.

Commissioner Knox agreed.

In response to a comment, Chairman Getman pointed out that regulations are always drafted in coordination with enforcement staff.

Commissioner Swanson noted that the general public wanted laws that will work for their best interest.

Chairman Getman stated that the definition of "agent" was too broad in both the staff proposal and the Olson proposal. She asked why it needed to be defined instead of just understood.

Mr. Woodlock responded that there is a common sense understanding of "agent" that would work in almost all cases. The federal regulations define it in more detail. He noted that there are some peculiarities to the structure of campaign organizations that merit a special purpose definition, but he agreed that it may not be necessary.

Chairman Getman noted that Mr. Woodlock's definition would have included a pollster as an agent for a candidate. If a pollster worked for one candidate and a completely different committee, and the pollster conducted a poll for a committee which then made an independent expenditure supporting the candidate, it would automatically be considered "at the behest" of the candidate because the pollster worked for the candidate. She believed that definition would be too broad.

Mr. Woodlock noted that if "agent" is not defined, an Administrative Law Judge would ultimately have to make the determination.

Chairman Getman suggested that the staff's proposed definition of "agent" be changed to include only lines 9, 10, 11 and the word "committee," on line 12. The Olson proposal states, "for purposes of election strategy or advocacy," and she suggested that the definition may not be needed, or that something narrower could be considered.

Commissioner Downey opined that the definition of "agent" did not need to be included in the regulation, because it does not clarify § 85500(b)(1).

Mr. Woodlock agreed if the definition was changed as the Chairman suggested.

Chairman Getman stated that paragraph (c)(1) of the regulation proposed by the Olson firm provided a clear circumstance where there could be a conclusion that coordination exists. The further away from the concurrent nature of the coordination the more obscure the issue becomes, and she questioned whether there should be a presumption in that case.

Mr. Woodlock stated that it was easy when it can be shown that the person is currently working for the candidate. However, it would be very easy to evade a requirement that the person be currently working for the candidate through some formality.

Chairman Getman noted that many enforcement cases involve concurrent employment, and questioned whether it was necessary to address other circumstances. Currently, the regulation does not address concurrent work on two campaigns.

Mr. Woodlock did not believe that it should be a conclusive presumption because there could be concurrent employment where there is no coordination.

In response to a question, Ms. Fishburn stated that paragraphs 3 and 4 on page 2 of the Olson regulation were different from the staff proposal because one provided that the candidate or the candidate's agent actually participated in the communication decisions, while the second one involves negotiation and discussion, but no decisions. There could be overlapping activities that could be construed as participating in a decision or negotiation, but it captures both sets of circumstances.

In response to a question, Ms. Fishburn did not agree that an agreement was a decision. If the candidate decides that an advertisement will be shown in a certain media market it would be a decision. If the candidate agrees that the advertisement will feature certain issues, there is a decision ultimately, but the candidate may not be a part of that decision. It captures two aspects of any type of negotiation or discussion process. The first one implies that the candidate or the candidate's agent made a decision about some aspect of the communication.

Mr. Woodlock strongly objected to that, because it would require that enforcement authorities would have to prove the existence of an agreement, after proving that substantial negotiations have taken place.

In response to a question, Mr. Woodlock stated that paragraphs (B) and (C) of the staff proposal were not the same because they pertained to specific topics. Staff wanted to show that there was negotiation on any of a variety of activities and that a consensus was reached on any of them.

Commissioner Swanson asked how it would be enforced, noting that it sounded like hearsay.

Mr. Woodlock stated that enforcement in this area was difficult because it can involve understandings reached between two people in a restaurant. The agreement is inferred from subsequent behavior.

Chairman Getman noted that the Olson proposal included a provision that concludes that there is not coordination if the person has been invited to make an appearance before the members of the organization.

Mr. Woodlock stated that he did not see any problem with that provision, nor with most of the other provisions identifying when there was not coordination. However, put together, it is a "laundry list" and he questioned its usefulness. As an example, if a person made a contribution years earlier, he did not see how it would mean that a current expenditure was coordinated. Advice letters addressed the issues. He questioned why every instance had to be put in a regulation.

Chairman Getman noted that the staff proposal would presume that there is coordination if the information is provided, and the Olson proposal would presume there is not coordination if the information is not provided.

Mr. Woodlock responded that the language would need further study for comparison.

In response to a question, Mr. Woodlock stated that he would never have considered that persons meeting for purposes of discussing something other than election related issues would need to be specifically included on the list of things not considered coordination. He saw it as unnecessary.

Chairman Getman concluded the discussion, noting that the regulation would go back to staff for another Interested Persons meeting.

Item #4. Emergency Adoption of Regulation 18225.8, Defining Expenditures Coordinated with Committees.

Mr. Woodlock explained that the proposed regulation treats coordination with committees. Those issues were not addressed in regulation 18225.7 because there is a very strong distinction between coordination with candidates and coordination with people who are not candidates. There are different kinds of committees who pursue different purposes, and staff initially tried to draft a regulation that would embrace both candidates and committees, but found it could not be done. Additionally, staff is waiting to see how committees will behave under Proposition 34 so that there will be an empirical basis for drafting a regulation. Regulations from other jurisdictions seemed to focus on candidate coordination, and offered little guidance.

Mr. Woodlock explained that, prior to Proposition 34, many people would contact Technical Assistance Division (TA) and relay a scenario between committees and ask how it should be reported. TA would provide ad hoc advice. He believed that was necessary because there are few situations that repeat themselves. TA staff was concerned that the passage of 18225.7 would leave them without authority to help people with reporting questions relating to coordination between committees, and staff prepared 18225.8 to address the issue.

Mr. Woodlock explained that regulation 18225.8 would provide that coordinated expenditures among committees constitute a contribution. It provided authority for TA to continue to offer advice. He suggested that the Commission may want to write a regulation that governs what is coordination among committees, based on how committees behave. Staff is not prepared to do that yet, but needed a vehicle to allow them to help people who ask for help with their reporting.

In response to a question, Mr. Woodlock confirmed that the regulation is just about reporting. He had not asked Enforcement staff whether they would pursue violators of the regulation, but pointed out that they may not be able to because the regulation does not specify contributions to whom.

Chairman Getman observed that Ms. Fishburn's comment letter posed important questions and asked how those questions would be answered.

Mr. Woodlock responded that TA should be consulted for those questions, noting that TA staff have experience and knowledge regarding how to report.

Chairman Getman noted that the regulations should provide the answers to the questions.

Mr. Woodlock responded that there was no specific guidance.

Technical Assistance Division Chief Carla Wardlow stated that TA receives questions regarding ballot measure committees. The question of whether the ballot measure committee has received a contribution is most often posed, and the limits are not usually an issue. The proposed regulation is very similar to the existing regulation in terms of answering that question. Both provide a list of things that constitute "made at the behest of a candidate or a committee," which TA uses to answer those questions.

In response to a question, Ms. Wardlow stated that the first and second questions posed on page 5 of Ms. Fishburn's letter can be answered in regulation 18215, and she discussed the answers.

Commissioner Downey asked whether regulation 18215 could be used if regulation 18225.8 is adopted.

Ms. Menchaca explained that regulation 18225.8 was drafted contemplating that the existing 18225.7 would be repealed. Since the Commission did not repeal 18225.7, the necessity for the emergency regulation dealing with ballot measure committees no longer existed. However, it

would be helpful to know whether the concept of drafting separate regulations dealing with candidates and ballot measure committees (as an example) was useful. Staff drafted the regulation quickly to ensure that there would be no gap for ballot measure committees. Since regulation 18225.7 was not repealed, staff would continue to advise pursuant to regulation 18225.7 and whatever advice is available with respect to committees.

In response to a question, Mr. Woodlock stated that the Commission did not need to make a decision on proposed regulation 18225.8 at the present time, but that staff would still like guidance on it because it will be brought back to the Commission along with regulation 18225.7.

Ms. Menchaca agreed, noting that staff considered whether to include all committees in general when they were drafting the initial regulation. If staff developed a regulation that is very broad in scope, covering candidate-controlled committees and non-controlled committees, it will enhance the complexity of the issue. Staff could also approach it with a regulation just for non-controlled committees.

In response to a question, Mr. Woodlock stated that the proposed regulation interpreted § 82025.

Ms. Menchaca clarified that it interpreted "contribution," "expenditure," and "independent expenditure."

Commissioner Downey pointed out that § 82025 contained nothing about 'behested."

Ms. Wardlow suggested that § 82015(b)(1) be considered.

Chairman Getman asked Ms. Fishburn whether she had the same objections to the regulation given that the existing exceptions in § 82015 answer her concerns.

Ms. Fishburn responded that they still objected to the broad language of the regulation because the payment is not tied to a payment made on behalf of, or for the benefit of, the committee requesting the expenditure. She stated that it is where the advice has gone, and where the exceptions in regulation 18215 go in distinguishing between expenditures that confer some sort of benefit on a committee as opposed to someone making a suggestion. There are quite a few situations that would be addressed by the regulation in addition to the ballot measure committee that should be addressed. She agreed that there was no longer a need to adopt the regulation on an emergency basis.

In response to a question, Ms. Menchaca recommended that the regulation be set aside and be considered when regulation 18225.7 is discussed.

There was no objection from the Commission.

Item #8. September 2002 Work Plan Revisions.

a. Petition to Amend regulation 18531.7 pursuant to Government Code Sections 11426 and 11427 of the 1974 APA.

Staff Counsel Scott Tocher explained that Lance Olson, on behalf of the AFL-CIO, the Teachers Association and other labor unions, requested that regulation 18531.7 be reconsidered by the Commission. The petition complied with the procedural requirements. The Commission was asked whether it would consider possible amendments to the regulation, and, if so, the Commission was asked to consider what it should do with the regulation 18531.7 that was recently adopted.

Mr. Tocher stated that if the Commission decided to consider the questions presented in the petition, the matter should be noticed for a future Commission meeting. Staff proposed that a thorough discussion be provided at the October meeting, given the November election. Staff did not believe that it would be appropriate to consider the questions at the current meeting because it was not noticed for emergency adoption or amendment of the regulation, and because there has not been sufficient time to fully explore the points raised in the petition.

In response to a question, Mr. Tocher stated that the points raised in the petition are constitutional in nature, and suggested that the Commission may want to address the concerns posed. Staff would need more time to explore alternatives to the language, comparing the authorities and researching to ascertain how those authorities impact the PRA and FPPC regulations.

Chairman Getman stated that she had thought the Commission defined "member" to include union members, and noted that no one raised the concern when the regulation was being adopted. She opined that the regulation would have to be amended.

Mr. Tocher agreed.

In response to a question, Mr. Tocher stated that the 'behesting" issue was far more complicated than the petition suggested. He believed that there was authority for several different ways to deal with the issue, if the Commission determined that there must be some sort of accommodation for candidate coordination with these types of payments. This could impact other aspects of the regulation, such as the source of funds. He added that there is authority for the notion that political parties, as an example, may be treated differently from a typical union PAC. Staff would need to explore that issue.

Ms. Menchaca pointed out that staff will need to examine the rights of unions and whether other persons would be distinguished in the regulation. She agreed that more time was needed to further explore the issues, but suggested that it not be delayed for very long. The issue had merit, and staff would want feedback from the public on those issues.

Commissioner Downey noted that the concerns expressed in a comment letter from Kathryn Donovan would need to be addressed too. He asked whether the Commission should revisit the elimination of the distinction between payments made for communications to members of a organization by the organization itself or by its PAC. He requested staff's views on the Olson comments with regard to that issue.

Ms. Fishburn stated that her firm submitted, with their petition, proposed language that they believed addressed the firm's concerns. She noted that they would be happy to work with staff on other language.

Chairman Getman asked whether Ms. Fishburn knew of any constitutional right for a union to communicate with its members at the behest of a candidate.

Ms. Fishburn was not aware of any published authority which specifically addressed "at the behest," but noted the Supreme Court case of 1948, involving the Congress of Industrial Organizations, established the right of labor organizations to freely communicate with their members on their political views. She did not believe that the court was asked, in that case, whether the union had talked to a candidate before sending the communication. She explained that the federal regulation defined what a membership communication is, as opposed to defining what is "at the behest of a candidate." That definition includes requirements that the membership organization pay for the communication, that the communication express the organization's views and that it be sent to the organization's members. If those criteria are met, then the union has a First Amendment right to engage in that activity regardless of whether the union communicated with anyone about it, including any candidates. She did not agree with the LA Ethics Commission's comments that those types of payments are made under the direction and control of candidates. She urged that the Commission grant the petition and delay the effective date of the current regulation until the Commission can reconsider it.

Chairman Getman stated that, if the Commission defined "membership organization" as suggested by Ms. Fishburn, it would have to be made clear that the Commission is not addressing a political party organization, which does not have a constitutional right to communicate at the behest of a candidate without counting it as a contribution.

Ms. Fishburn agreed, and pointed out that the current regulation was not intended to address the issue of political party and member communications. She noted that her firm would be glad to be involved in any discussions regarding that issue if the Commission chose to address it.

In response to a question, Ms. Fishburn stated that political parties might be approached differently than unions with regard to this issue. She asked for time to discuss with other clients before giving comments to the Commission on the issue.

Tony Miller, appearing in response to Senator Burton's letter, stated that the proponents of Proposition 208 thought that unions and other organizations should be able to communicate with their members freely. They also believed that "behested" communications were acceptable. They believed that it was a significant "relief valve" to the limitations imposed on contributions.

He believed that Senator Burton was correct, but pointed out that it was probably irrelevent. If people voted for it thinking that was what they voted for, then the exemption should be broadly construed. The current regulation does not construe it broadly. Mr. Miller believed that it would be appropriate for the Commission to reconsider the regulation.

Barbara Kerr, Vice-President of the California Teacher's Association, stated that this was a very complex issue, and thanked the Commission for reconsidering the issue. She stated that, if the Commission chooses to reconsider the amendment, representatives from CTA would be involved in the process.

Chairman Getman responded that it is very helpful to have public input.

Stephen Kaufman, representing a number of unions in the Los Angeles area, stated that he listened to the last Commission meeting discussion of the regulation, and found it frustrating that he could not provide input. He urged the Commission to reconsider adoption of the regulation. The definition of "membership" was of particular concern, and would affect communications at both the state and local levels of unions he represents.

Mr. Kaufman addressed the issue of payments from a sponsored committee versus payments from the organization itself. He noted that sponsored committees, by definition, receive funding and backing from the organization and its members which sponsor that PAC. He supported the Olson firm's proposed regulation, noting that it made clear that the regulation addressed sponsored PACs, and suggested that there is no distinction to be made between an organization and its sponsored PAC when considering who the members are of each of those entities. Therefore, by definition under state law, a sponsored PAC should be treated exactly the same for these purposes with regard to its members as the sponsoring organization would be treated.

Chairman Getman asked whether a sponsored PAC can receive contributions from anyone other than union members.

Mr. Kaufman responded that a sponsored PAC could get contributions from other than union members, but pointed out that, by definition, a sponsoring organization can only accept limited amounts of those contributions because it must receive almost all of its funding from members or the sponsoring organization in order to keep its sponsored status.

Chairman Getman noted her concern that outside sources could be used to fund a membership communication. She agreed that membership organizations that use their own money for membership communication should be able to do so free from government regulation. However, when other monies are involved it becomes a concern that the PAC could become a conduit for contributions. She asked whether there was a way to ensure that it would not happen if sponsored PACs are allowed to finance membership communications.

Mr. Kaufman responded that the issue should be treated no differently for sponsored PACs than for the organization itself. He noted that a member organization could raise money for its organization, just as its PAC could raise additional money for the PAC. He understood the

concern, but did not think it should be addressed by cutting off member communications by a sponsored PAC to the members of the organization. He suggested that the regulation could be directed toward activity that is specifically designed to solicit contributions from outside sources through an organization or a PAC that is designed to fund member communications of the organization. That should be addressed as a separate issue from whether a legitimate member communication expense can be made out of PAC funds or out of an organization's general fund.

In response to a question, Mr. Kaufman stated that he was not at the meeting to address the issue of whether his clients had a position on the question of outside funding for member communications. If it is a concern, a regulation could address the activity of the donor, or could address what the donor could give with respect to an individual PAC or to an organization. That activity could be monitored in terms of classifying what that activity is, as opposed to addressing the PACs themselves and any expenditures they would make with their members.

Commissioner Knox responded that the Commission received some advice indicating that the Commission is not permitted by law to draw a distinction between outside and inside funding of member communications.

Mr. Kaufman stated that he had no view on that issue on behalf of his clients. He did not think the issue was any different for a sponsored PAC than it would be for the sponsoring organization.

Kathy Donovan, from Pillsbury Winthrop, as representative of corporations and trade associations, pointed out that the membership issues, particularly the sponsored PAC issue, apply also to trade associations. They are usually non-profit, 501(c)(4) corporations that can use a small amount of money to engage in express advocacy to support candidates. However, she noted that tax issues make it much better for trade organizations to use their PACs for membership communications. For that additional complicating reason she believed that the sponsored PAC should be able to pay for the membership communications.

Commissioner Knox supported accepting the petition, and noted his concern that unions were inadvertently excluded from the membership definition. He also asked that staff address the issue of whether there was authority under the statute to draw a distinction between "inside" and "outside" funding.

Commissioner Downey agreed, and suggested that the effective date of regulation 18531.7 should be delayed.

Commissioner Swanson agreed.

In response to a question, Ms. Menchaca recommended that regulation 18531.7 be withdrawn, noting that the Commission must notify OAL of what it wants to do with the regulation by September 13, 2002. The Commission could still use the notice that was done in order to adopt the regulation, but staff would accomplish this by asking OAL to delay filing of the regulation.

She stated that, in order to have clear guidance for the November election, it should be calendared for the October meeting.

Commissioner Downey moved that the petition be accepted, that the current regulation be withdrawn, and that the matter be set for further hearing in October 2002.

Commissioner Knox seconded the motion.

The motion carried by a unanimous vote of 4-0.

Chairman Getman urged the public to work with staff on the regulation.

Mr. Tocher noted that public input should be made within the week.

Chairman Getman noted that another request had been made to consider adding an item to the regulation calendar.

Ms. Menchaca stated that staff received a request to amend regulation 18116 regarding the filing of late contribution reports. Staff did not object to looking at the issue further, but did have concerns about making the change so close to the November election. She noted that statutory construction issues would have to be explored regarding the distinction between a business day versus inclusion of a requirement for filings that specify a number of hours (ie. 24 hours versus 48 hours). Any regulatory language would have to be supported by the statute, and staff would need to do further research which could result in identifying the need for legislative rather than regulatory change.

Mr. Russo stated that the current rule is clear, providing that late contribution reporting must take place within 24 hours of the making of the contribution. He did not believe it would be a good time to cast doubt on that rule for purposes of the current election cycle. He shared Ms. Menchaca's concerns about the concept of changing the reporting timelines, but stressed that dealing with the change now was not a good idea, given the importance of late contribution reporting and the need to have consistent rules.

Commissioner Swanson supported Mr. Russo's recommendation that the Commission not deal with the issue during the current election period.

Chairman Getman agreed.

There was no objection from the Commission to staff's recommendation not to change the rule at the current time.

In response to a question, Chairman Getman stated that it could be considered on the regulatory calendar for next year.

Commissioner Swanson noted that the letter from Colleen McAndrews had some good ideas, and urged the Commission to seriously consider her concerns after the election.

Ms. Menchaca noted that it is not likely that staff will be able to address affiliation reporting regulation 18428 in October, because of the additional issues that must be considered in October. She noted that she did not believe that all of the conflicts of interest projects in the work plan will be presented to the Commission for regulatory action during this calendar year.

Chairman Getman stated that it had been a very burdensome process and she apologized to staff.

Item #5. Proposition 34 Regulations: Payments for Communications that Clearly Identify a State Candidate -- Adoption of Amendment to Regulation 18539.2.

Chairman Getman moved adoption of the amendment to Regulation 18539.2.

Commissioner Downey seconded the motion.

Commissioners Downey, Swanson, Knox and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Item #6. Biennial Gift Limit Adjustment: Pre-notice Discussion of Proposed Amendments to Regulations 18703.4, 18730, 18940.2, 18942.1 and 18943.

There being no objection, the amendments were approved for pre-notice purposes.

Item #9. *In the Matter of Leonard Ross and Committee To Elect Leonard Ross*, FPPC No. 99/204.

Mr. Russo explained that the respondent was an unsuccessful candidate for the governing board of the Inglewood Unified School District in the April 6, 1999 election. The respondent had failed to file two pre-election campaign statements, and failed to file three post-election semi-annual campaign statements for that election. The Administrative Law Judge (ALJ) found that the respondents committed all five violations alleged against them, and noted that the respondent had committed similar previous violations. The ALJ imposed an administrative penalty of $5,000, and issued an order that the respondents file two semi-annual campaign statements that had not yet been filed. He explained that the matter was handled in Los Angeles by enforcement counsel Julia Bilaver.

In response to a question, Mr. Russo stated that Mr. Ross submitted no briefing in the matter.

Item #13. *Fair Political Practices Commission v. Republican National Committee - California Account and Jay Banning*, FPPC No. 02/20.

Chairman Getman noted that item #13 is informational only.

Items #11, #12.

Commissioner Swanson moved that the following items be approved on the consent calendar:

Item #11. *In the Matter of Elizabeth Cabraser*; FPPC No. 02/425. (4 counts.)

Item #12. *In the Matter of Ronald Arnoldsen*, FPPC No. 99/640. (1 count.)

There being no objection, the items were approved.

Item #10. *In the Matter of Mid-Valley Engineering, Inc.*, FPPC No. 99/720.

Staff Counsel Melodee Mathay explained that the stipulation involved 112 counts of campaign money laundering that occurred in Stanislaus County from 1997 to 1999. She described Mid-Valley Engineering, Inc., noting that it was located in Modesto, California, and represents businesses that appear before local city councils seeking development approvals. The company is currently owned by Curt and Cathy DeLaMare.

Ms. Mathay charged that Mid-Valley reimbursed 20 of its employees for making contributions to candidates for the Modesto and Oakdale City Councils. The reimbursements were in the form of company checks and through payroll adjustments. The investigation was initiated following a complaint received in October of 1999 regarding eight contributions from Mid-Valley employees that were reported on the 1999 campaign statement of Modesto City Council candidate William Conrad. Subsequently, staff investigated Mr. Conrad's statements as well as other city council candidate's statements over a period of three or four years, learning that Mid-Valley employees had made a series of mostly $99 contributions to other candidates. Since most of the contributions were $99, they were not itemized and therefore not reported on candidate's campaign statements.

Ms. Mathay noted that Senior Investigator Sandra Buckner handled the investigation, and Ms. Mathay credited her for uncovering the large amount of violations in the case. Ms. Mathay explained the efforts made by Ms. Buckner.

Ms. Mathay noted that Mid-Valley's counsel, Chip Nielsen, contacted the FPPC during Ms. Buckner's investigation, and that Mid-Valley fully cooperated during the remaining investigation. They immediately admitted that the laundering occurred and agreed to work with staff in its investigation. Mr. DeLaMare repeatedly stated that he did not know that the company's reimbursement to the employees for the contribution was illegal, and Mid-Valley provided full access to their corporate, employee, and payroll records to FPPC staff. The respondent also voluntarily agreed to let staff interview its owners, controller, and several employees who had been involved in the laundering scheme.

Ms. Mathay explained that the total amount of money laundered over the three-year period was $15,452, a relatively small amount for a money laundering case. Staff recommended approval of the stipulation, which imposed a fine of $185,400.

In response to a question, Ms. Mathay explained that the possible maximum fine would have been $224,000. Staff considered the small amount of money actually laundered and the extreme cooperation received from the respondents compared with other laundering cases to arrive at the stipulated amount, which she believed to be comparable with other similar cases.

Chairman Getman commended Ms. Mathay and Ms. Buckner for their work on the case.

Chairman Getman moved approval of the stipulation.

Commissioner Knox seconded the motion.

Commissioners Downey, Swanson, Knox and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

The Commissioner adjourned to closed session at 11:50 a.m.

The Commission reconvened at 1:10 p.m.

Chairman Getman announced that the Commission voted to adopt the Administrative Law Judge's decision in the matter of *Leonard Ross.*

Item #7. Overview -- Conflict of Interest Regulations Improvement Project Revisions.

Assistant General Counsel John Wallace stated that a series of regulatory changes were brought to the Commission in November 2001. He explained the background of that improvement project, noting that it made significant revisions to the sequence and the substance of the conflict of interest regulations. The first phase of the project dealt with restructuring the sequence, culminating in the development of the standard eight-step process. The second phase amended a large number of regulations. The projects were revisited in October 2001, and the Commission identified five items that they wished to review again. Three of those items were being brought back to the Commission for discussion. Two of the items are still being developed and staff would provide updates of those two items.

Mr. Wallace explained that staff anticipated presenting the Commission with possible amendments to the conflict of interest rules as applied to general plan decisions in January 2003. Staff does not yet have a proposed approach on the issue, but would be conducting an interested persons meeting in San Diego on September 19, which should provide more information for consideration. The project may impact other conflict of interest regulations.

Mr. Wallace stated that codification of the *Siegel* opinion was requested by the city attorney for Berkeley. Staff met with Manuela Albequerque, of the Berkeley City Attorney's office, and held an Interested Persons meeting to discuss the issue. Staff anticipated that they would bring the issue back to the Commission for consideration sometime next year.

Item #7(a). Pre-notice Discussion of Amendments to Regulation 18704.2: Determining Whether Directly or Indirectly Involved in a Governmental Decision: Interest in Real Property.

Mr. Wallace stated that Regulation 18704.2 guides a public official's determination of whether the public official's real property is directly or indirectly involved in a decision, addressing step four in the eight-step analysis. He noted that this step often determines the outcome of the analysis because when real property is directly involved in a decision, materiality is presumed. When the official's real property is indirectly involved in the decision, there is a presumption of non-materiality. The draft amendments concern how the distance test (the 500' rule) should be applied.

Mr. Wallace explained that, historically, there have been two clusters of standards to determine when an official's property was directly involved in a decision. Both clusters imposed the same "one-penny" rule, but were treated as separate clusters. The first cluster is the "decision" cluster, comprised of a list of specific decisions impacting the official's real property that would be considered to be directly affecting the official's real property. The second group is the distance test. Property within the distance area was considered directly involved. Property outside the distance area was indirectly involved. He referred to Appendix 1 of the staff memo, which illustrated the decision cluster in an older version of the regulation. Appendix 2 included the distance test in an older version of the regulation.

Mr. Wallace observed that the two regulations were, historically, totally separate types of tests, resulting in the same materiality standard. In December 2000, the two rules were merged because they imposed the exact same standard as the 1¢ rule. That created an ambiguity, raising the question of whether the distance test was limited to just the decisions set out in the decision cluster. Staff did not view that as the intent of the Commission when those provisions were merged. Staff proposed changes to regulation 18704.2 in an effort to clarify what they believed to be the Commission's intent.

In response to a question, Mr. Wallace explained that Appendix 3 was a strike-out of the current regulation, showing what the regulation looked like when the two regulations were being merged.

Mr. Wallace stated that the proposed language attempts to take the distance test out of the preamble language of the regulation and put it into its own subdivision, making it a free-standing exception. In doing this, staff believed the ambiguity was eliminated. Staff relocated the phrase "subject of the government decision" to limit it to the distance test. Additionally, staff made some non-substantive changes by moving language into what they believe were more appropriate sections. He provided examples of those changes. Lastly, staff moved the exceptions that were buried in different subdivisions into one subdivision. This clarified that the exceptions apply not only to the decision cluster type decisions, but also to the 500-foot rule.

In response to a question, Mr. Wallace reported that staff had not yet received any public comment on the proposals.

Karin Troedsson, Deputy Town Attorney for the town of Yountville, and the Deputy City Attorney for the city of St. Helena distributed conflict of interest maps for the city of Yountville. She complimented staff on their efforts with subsection (a) of the regulation, noting that it appeared that the proposal would resolve interpretation questions. She was concerned, however, about the effect of the 500-foot rule for small jurisdictions.

Ms. Troedsson reported that Yountville is 1.56 square miles and has 4,000 residents, but nearly 1/3 of the town's area and population is a state-run veteran's home. Therefore, the decisions involve less than one square mile and less than 2,000 people. She asked the Commission to consider that small jurisdictions have a severe lack of resources, that the 500-foot rule creates a real problem for small jurisdictions, and that throughout the regulations there is a preference for small jurisdictions.

Ms. Troedsson pointed out that small jurisdictions do not have an attorney to dedicate to the long regulatory process. Several council members wanted to testify to the Commission and thought that they could with the new phone system. She encouraged the Commission to provide the same opportunity for telephone testimony as is provided for the Interested Persons meetings.

Chairman Getman explained that the Commission does not have the capability to allow testimony over the phone at Commission meetings, but noted that Commissioners read every letter they get provided they do not receive it the day of the meeting. She encouraged Ms. Troedsson's clients to write to the Commission.

Ms. Troedsson explained that, with respect to the 500' rule, one size does not fit all. Referring to the maps she distributed, she explained that the map showed 500' circles for real property interests belonging to the public officials of Yountville, illustrating that 1/3 of the town involved conflicts for the public officials. She noted that they frequently have problems making decisions in the commercial district.

Chairman Getman noted that the map indicated only one member with a disqualifying interest in the commercial district, and questioned how the council was prohibited from making decisions.

Ms. Troedsson responded that the town council is currently considering an item that involves conflicts for two members of the council, involving a small corner of the commercial area. Another council member has a source of income issue with some of the projects that arise in the commercial district. She stated that they frequently can not get a quorum vote on items in the commercial area, either because of the 500' rule or source of income issues.

Ms. Troedsson stated that many of the council members have conflicts of interest all the time over much of the town. One or more of the council members have been disqualified on almost every significant issue that has come before them since the rules were enacted. The rules make it extremely difficult to live in Yountville, own a business in Yountville, have a family with real property interests in Yountville, and serve on the town council. She noted that Emeryville council members live in Emeryville, but commute to San Francisco for work. Therefore, they do

not have the same real property interests as Yountville council members. St. Helena has a council member who will not run for office again because he cannot vote on anything due to conflicts.

Ms. Troedsson proposed that the 500' rule be changed to a 300' rule for qualified small jurisdictions. This could be applied to a very small number of jurisdictions by lowering the population threshold to 10,000 or by a geographic reduction. Staff has proposed an either/or scenario for qualifying as a small jurisdiction. She urged the Commission to adopt 18704.2 with that provision.

Mr. Wallace explained that staff had ongoing communication with representatives from Yountville on the regulation and appreciated their input.

Chairman Getman noted that other small jurisdictions provided input during the Phase 2 project.

Item #7(b). Pre-notice Discussion of Proposed Amendments to Regulation 18707.3: "Public Generally" Exception for Small Jurisdictions.

Staff Counsel Natalie Bocanegra stated that the "small jurisdiction" exception is one of a number of "public generally" exceptions. She presented draft language amending regulation 18707.3 based on proposals submitted by the town of Yountville.

Ms. Bocanegra explained that currently, certain criteria must be met in order for the exception to apply. The factors considered for the exception include: the size of the jurisdiction; the type of effect the decision has on an official's residence; the distance of the official's residence from the property subject to a decision; the number of properties within a similar distance; the size of the residence; and, whether the effect on the official's property is substantially similar to the effect on a majority of residences in a similar area.

Ms. Bocanegra stated that the proposed amendment did not include alteration of the population requirement or expansion to include all real property interests, even though a request had been made to do so. The proposed amendments addressed the following factors: direct versus indirect effect on the official's residence; the distance between the residence and the subject property; the number of properties under separate ownership; and whether the effect was substantially the same for other properties. She stated that the exception traditionally operated when the official's residence was indirectly involved in a decision, and more than 300' or, currently, 500' from the subject property.

Ms. Bocanegra stated that the Yountville proposal would modify the requirements pertaining to the "direct effect" and the existing 500' requirement by having the small jurisdiction regulation cite only subdivisions (a)(2) through (a)(6), and not subdivision (a)(1) of regulation 18704.2. Additionally, it would change the 500' distance requirement to 300'. If adopted, the proposal would apply within the 500' area where a material effect is presumed to occur. Staff did not support the amendment because it would allow public officials in small jurisdictions to

participate in decisions, while a conflict of interest would be presumed in other larger jurisdictions based on the same circumstances.

Ms. Bocanegra noted that disparity did not occur under the old version of the regulation, and that the Enforcement Division expressed strong reservations to the Yountville proposal because of that disparity. She explained that the old rule provided that the exception did not apply when the subject property was within 300' of the public official's interest.

Ms. Menchaca stated that, if the 500' distance was reduced to 300', it would almost double the area presumed to be non-material. The small jurisdictions assert that it is important to increase the size in order to allow officials to participate.

In response to a question, Mr. Wallace stated that the current rule provides that a population of 25,000 qualifies a city as a "small jurisdiction".

Ms. Menchaca noted that about 49% of California cities qualify as small cities under that rule.

In response to a question, Mr. Wallace stated that staff found that a significant number of cities would no longer qualify for the exception if a small jurisdiction included a population of 10,000 or less. Staff did not support that approach.

Ms. Bocanegra stated that San Pablo requested that they qualify for the exception, noting that they have a population of 30,000.

Ms. Bocanegra explained that the Commission was asked to consider whether to change the reference to the 500' distance and whether to change the actual distance to 300' in decision 1.

Mike Martello, City Attorney for the City of Mountain View and representing the League of California Cities, City Attorneys Division, stated that 18704.2 included a provision requiring that zone use changes apply to all uses in the zone. He pointed out that cities can make a very broad-sounding zoning change that applies very specifically. He gave as an example a city proposal to require that stand-alone bars in a C3 zone get a CUP. One of the Planning Commissioners owned property that backed up to a bar, and the provision really only applied to that bar. Mr. Martello advised that a conflict of interest existed for the Planning Commissioner. He suggested including the language, "It applies to all properties in the zone unless there are specific applications that may distinguish your property."

Mr. Martello stated that the city attorneys supported Yountville's position. He noted that when the 2,500' rule was eliminated, small jurisdictions did not provide input. He explained the processes involved in that decision-making, noting that the small jurisdiction issue did not surface at the time. Small jurisdictions had difficulty with the 300' rule, and it has become increasingly difficult for them since it was changed to a 500' rule. Mr. Martello pointed out that, if the 300' rule is reinstated for small jurisdictions, other protections exist. He explained that the appearance of impropriety is more noticeable in small jurisdictions because everyone knows each other.

Mr. Martello stated that the California City Attorneys support doing something to resolve the problem for small cities.

In response to a question, Mr. Martello did not see a problem with the unequal treatment issue. The new rule, eliminating the 2,500' circle, worked very well to help public officials. He believed that the small jurisdiction issue was a serious one, because council members often live near each other.

In response to a question, Ms. Menchaca stated that she agreed that a problem existed for small jurisdictions. Staff did not support changing the 500' rule to 300' because it would increase the number of decisions that would be considered non-material. Of greater concern to Ms. Menchaca, however, was to learn whether the jurisdictions were looking for a step 4 analysis instead of the exception analysis. The proposal from Yountville would provide that the presumption of non-materiality would exist and the need for an exception would not be necessary. This would eliminate the need to identify whether the factors of the public generally exception existed. She explained that part of the problem could be addressed through the public generally exception, and asked for input from the local jurisdictions regarding the alternative approaches.

Ms. Troedsson stated that local jurisdictions clearly preferred to deal with the issue in step 4. She explained that a recent city project, affecting the whole town equally, involved one city council member who was within 450' of the subject property. At step 4, the council member had a presumed conflict of interest, and her office spent 20 hours producing paperwork trying to get immunity under the public generally exception for the council member. If the issue could be dealt with under step 4, it would provide a clear rule that would be easier to enforce, and extra resources would not have to be spent determining whether conflicts existed.

Chairman Getman asked whether Ms. Troedsson believed that regulation 18707.3 could be eliminated by doing that.

Ms. Troedsson responded that regulation 18707.3 was currently more restrictive than the public generally exception in regulation 18707.1. She believed that the small jurisdiction rule was useless.

Ms. Menchaca added that it is important to distinguish conflicts that result from a personal residence versus all real property. Proposed regulation 18704.2 applies to all real property, including business and commercial property. She did not believe that staff would support applying the 300' rule in step 4 beyond a personal residence, because it could result in very big loopholes that would be beyond the scope of 87103.

Mr. Wallace noted that he advised small jurisdiction representatives that the preference of the Commission would most likely be to look at the issue in the small jurisdiction regulation, and not revisiting 18704.2 on the issue. He agreed that placing it in 18704.2 and removing it from the small jurisdictions regulation would eliminate the accompanying safeguards that are required in

the public generally regulation. He hesitated to alter 18704.2 to try to make a special rule for small jurisdictions, which is why staff presented language in the small jurisdiction regulation.

Commissioner Downey noted that the Commission appeared to have made a policy decision that real property within the 500' radius was presumed to be material. He wondered how the likelihood of a conflict would be any different in Yountville than it would be in a large city if the subject property is within the 500' radius. He sympathized with the small jurisdictions, but noted that the Commission's job was to prevent conflicts of interest, and the eight-step process provided a means to do that. He questioned how to justify the disparity if small jurisdictions are given a 300' materiality radius.

Ms. Troedsson responded that the eight-step process does not consider the common law rule that asks whether a conflict exists when the only property affected by the rule is a single business.

Commissioner Downey observed that the Commission has decided that if a governmental official makes a decision that impacts a piece of property that is within 500' of the official's property, it is material. He asked whether Ms. Troedsson was recommending that the 500' rule be reduced to 300' simply to reduce the number of disqualifying conflicts.

Ms. Troedsson responded that the council had a real problem with participation. Many public officials have to recuse themselves often.

Commissioner Downey asked whether, then, conflicts of interest should be ignored.

Ms. Troedsson responded that one size does not fit all. A 300' rule made more sense for a small jurisdiction.

Chairman Getman agreed that it was a difficult issue. She noted that during the Phase 2 discussions the Commission was sympathetic to concerns that officials were often disqualified. However, the law requires that that the Commission determine when conflicts exist, and she noted that there are other safeguards. She explained that the Commission often hears testimony that many people are disqualified, but further discussion reveals that the disqualifications are not that common. She explained that Ms. Troedsson stated that three council members were disqualified in her earlier example, but only two were disqualified because of the 500' rule. Even if the 500' rule were changed, another disqualification would exist under the source of income rule. She noted that a governmental body is never prevented from making a decision because the rules allow that a quorum can be reached by allowing officials with conflicts to participate under certain conditions. She was concerned that addressing the problem in step 4 would mean providing that a conflict does not exist for officials in small jurisdictions even though the same circumstances would be a conflict elsewhere in the state.

Chairman Getman stated that, if the public generally exception does not work for small jurisdictions, then the Commission should consider making it more usable for them. However, she did not support changing the rule to provide that a conflict does not exist.

Ms. Troedsson noted that when the mayor of Yountville had a conflict concerning a floodwall that was within 450 feet of her property, she contacted the FPPC for advice. FPPC advised her that she would have to determine whether the public generally exception applied. Rather than make that determination, the mayor did not vote because she could not afford a prosecution by the FPPC. Staff spent days trying to make that determination, but still was not able to get an immunity letter from the FPPC. Yountville staff spent a lot of their resources trying to get the immunity, and they could not afford to do that every time.

Chairman Getman suggested that the mayor should not vote on a project so close to her residence.

Ms. Troedsson stated that the floodwall would have provided no benefit to the mayor.

Mr. Wallace stated that, if there is a showing of no financial effect at all, there would not be a conflict of interest. He noted that the small jurisdictions could use the universal public generally rule which is sometimes more effective than the small jurisdiction rule. He was sympathetic to the proof issues, but pointed out that all jurisdictions faced that problem and that it is impossible to create a bright line rule to address the issue.

Chairman Getman did not support changing the rule from 500' to 300'.

Commissioner Swanson stated that few jurisdictions are as small as Yountville and noted that there are ways to function within the realm of the current law. She asked staff why granting a special status under regulation 18704.2 isolating a small number of jurisdictions would create a problem.

Mr. Wallace responded that if regulations identifying when a conflict exist are different for different jurisdictions it would be problematic. He did not believe that the issue should be addressed in 18704.2. He noted that the materiality discussions of Phase 1 and Phase 2 seemed endless, while the small jurisdiction discussions were not as extensive. He did not believe it advisable to identify materiality based on the size of the jurisdiction or the compact nature of the jurisdiction. It would be a huge undertaking to set different definitions of materiality in that way.

Chairman Getman noted that if it were done, other jurisdictions would then ask the Commission for inclusion in the new rule. During Phase 2, the Commission decided that there would always be problems for someone, but that the public generally exception could be used in those instances. They determined that the same set of rules would be used to identify what is a conflict. She discussed the types of jurisdictions that were considered during Phase 2, noting that every jurisdiction had some kind of issue.

Commissioner Swanson stated that the issues presented by Ms. Troedsson affected a very small number of jurisdictions. She noted that most public officials in the small jurisdictions do not get paid and do the work to help their communities. She questioned whether the concerns could be addressed in another way.

Chairman Getman noted that 49% of California cities have a population of 25,000 or less.

Commissoner Swanson noted that there is a big difference between 25,000 and 10,000.

Ms. Bocanegra noted that Yountville's situation was unique. She advised the Commission that she would find out how many jurisdictions have a population of 10,000 or less.

Commissioner Swanson pointed out that there are two areas in her community with less than 10,000 people, and that she was sympathetic to the concerns of the small jurisdictions. She suggested that staff try to find some way to address the issues.

Chairman Getman proposed that the language on item "a" be noticed without changing the 500' rule, and that the small jurisdiction language be redrafted. She noted that the "public generally" exception, prior to Phase 2, was considered useless, and the Commission revised it as part of its Phase 2 project. She suggested that staff explore ways to make the small jurisdiction exception work for small jurisdictions.

Ms. Bocanegra clarified that regulation 18707.1 applies, in some instances, where the small jurisdiction exception does not. She noted that the exception in 18707.1 did apply in the scenario presented earlier by Ms. Troedsson because there was not a requirement that there be no direct effect in 18707.1.

Commissioner Knox agreed that there should be a way to address the city of Yountville's concerns, noting that the same problems were not likely to exist in a large city. He did not want to exclude people from meaningful participation while holding public office because of the conflict of interest rules.

Chairman Getman suggested that the definition of "small jurisdiction" could be explored for that purpose, considering small populations or small geographic areas.

Commissioner Swanson suggested that both could be considered.

Ms. Menchaca stated that item "b" included consideration of population. Additionally, one of the proposals submitted by the public dealt with the geographic area. She believed that the current regulations contain some of the factors staff would look at, and staff could do further research to explore the impacts of how the different parts of the regulation work. She asked whether the Commission still wanted to confine the regulations to personal residences and not commercial property.

Commissioner Knox pointed out that the same problem would arise with a business property.

Chairman Getman noted that the source of income could then disqualify an official.

Ms. Menchaca stated that reworking the public generally small jurisdictions regulation may solve many of the problems. She believed that staff would support continuing to have the

regulation be limited to personal residences. Including business properties could require that other materiality regulations be changed.

Commissioner Knox stated that ownership of a business would be just as much of a problem in a small town as would ownership of a home.

Chairman Getman noted that city council members often have businesses in the business zone, and are disqualified when addressing an issue dealing with the primary business zone. That problem exists in all jurisdictions.

Mr. Wallace stated that city council members are required to own a residence in the jurisdiction, supporting the concept that only personal residences be included.

In response to a question, Ms. Troedsson stated that ownership of business property was a big issue in Yountville, where the entire business district could be included in one 500' circle. She explained that one council member could not participate in any decisions involving the commercial district. Another council member had a commercial interest in another area of Yountville, but may be moving his business to the commercial district.

Chairman Getman observed that there would still be four other people who can vote. She opined that, if the council member was going to be moving to the commercial district, perhaps he should not be voting on issues involving that district. She noted that some people would argue that it is a good example of when a public official should not vote.

Ms. Troedsson stated that the makeup of the council will be changing drastically in the next year and that other business owners should not be discouraged from participating in public service.

Chairman Getman observed that the council member whose business was in the middle of the business district could still make decisions on issues affecting areas other than the business district.

Ms. Troedsson agreed, but noted that if all of the decisions affect the business district and the official cannot vote on any of them, the council member may not show up for the meeting.

Chairman Getman responded that it is the law.

Commissioner Swanson noted that if that council member were allowed to vote he would wield tremendous power.

Chairman Getman asked whether a problem truly existed if the council member was not allowed to vote on issues that would affect his property.

Ms. Troedsson responded that if the 500' rule were changed to 300' it would fit better for a smaller jurisdiction. She explained that some issues may not affect that council member's

business at all, and noted that he may be the only person with individual knowledge about the business district.

Chairman Getman questioned how the decision could not affect the property at all, but agreed that the issue could be explored.

Ms. Menchaca suggested that the general rule could apply, and that staff could look at that analysis to see how it impacts small jurisdictions. She stated that the earliest that staff could bring the regulations back to the Commission would be in November.

Commissioner Swanson supported Ms. Menchaca's suggestion, and ask that staff address the exclusion of a primary residence and other options.

Chairman Getman urged staff to be sure to provide notice to other people in Yountville, so that all voices are heard.

Commissioner Swanson agreed, and urged the League of California Cities to assist that effort.

In response to a question, Ms. Troedsson stated that the *Yountville Sun* published a weekly newspaper for Yountville. She complimented FPPC staff and thanked them for working with Yountville staff.

Chairman Getman noted that, if there is enough interest and the budget allows, FPPC staff could go to Yountville to hear testimony.

Chairman Getman noted that the November and December meetings may be consolidated.

Item #7c. Pre-notice Discussion of Proposed Amendments to Regulation 18705.1: Material Financial Effect on Indirectly-Involved Business Entities.

Staff Counsel Ken Glick stated that regulation 18705.1 involves the fifth step of the eight-step conflict of interest analysis, and contains materiality standards that are applicable to business entities that are also economic interests of public officials. The materiality standards of that regulation provide that the larger the business, the greater the financial effect must be before it is considered material.

Mr. Glick reported that the regulation created four categories. The first category is companies listed on Fortune 500 (the largest category). The second category is companies listed on the New York Stock Exchange (NYSE) or companies that meet the financial criteria for being on the NYSE. The third category includes companies listed on the American Stock Exchange (AMEX), NASDAQ, or companies meeting the financial criteria to be so listed. The fourth category includes companies not meeting the first three categories. He noted that "meeting the financial criteria for listing" is referred to as the alternative standard.

Mr. Glick stated that the public has found the alternative standard to be difficult to apply because it is difficult to obtain financial information and to understand which of the listing criteria of the exchanges to use.

Mr. Glick presented the first of two options for the Commission's consideration. Option 1 would retain the current language, and add some definitions to it that would include all of the financial listing criteria for the three exchanges. Appendix B identified all of the listing criteria for the exchanges. He discussed the different types of standards for listing. He estimated that it would take a minimum of 40 additional lines of text in the regulation to attempt to reproduce those and provide some type of specificity for the alternative standard.

Mr. Glick explained that Option 2(a) would substitute the alternative language with, "Earnings before taxes" and, with respect to NASDAQ "net income." The distinction is necessary because NASDAQ uses "net income" as a listing criteria and the other exchanges do not. This is known as the "fixed threshold approach" for the alternative standard. Option 2(b) would add to the fixed approach a self-correcting mechanism that would allow the dollar thresholds to change if the exchanges adopt different financial thresholds for these criteria.

Mr. Glick stated that the proposed regulation included definitions of "earnings before taxes" and "net income." Those definitions were taken from reputable sources and checked with the Securities and Exchange Commission's (SEC) financial database, which uses those terms. Enforcement staff assisted in putting together the definitions as well as the approach.

Mr. Glick explained that the alternative standard is also used in the small investor exception, which is also in the regulation. He stated that the small investor exception provides that when a business entity is directly involved in a decision and the only economic interest of a public official in that entity is an investment of $25,000 or less, and the business is a Fortune 500 business or listed on the NYSE or meeting the financial criteria to be so listed, then the indirect materiality standards should be applied.

In response to a question concerning the small investor exception, Mr. Glick explained that staff recommended option 2(b) because it removes the public burden of having to explore three years of financial data to determine whether the thresholds for the NYSE have been met. Instead, it would require the public to determine earnings before taxes in the most recent fiscal year.

There was no objection from the Commission to Mr. Glick's recommendation.

In response to a question, Mr. Glick explained that the Commission always has the option to eliminate the alternative standard language. Staff believed that the alternative standard is not being used with respect to the exception, but did not have data supporting that belief. The question could be tested in the public notice and if there is no interest in retaining it, the Commission could delete it.

Mr. Wallace explained that the proposed changes to the regulations will affect the language of the small investor exception to some extent. He noted that page 2 of the proposed regulation

included a provision that refers to the alternate listing standard. That language is different in that it does not simply designate the materiality thresholds, but provides an entire exception that removes it from the direct effect standards. This approach offered the Commission the option to use the same process with a narrow exception that the Commission uses in the materiality thresholds.

Chairman Getman commented that it made sense, noting that if someone cannot follow the financial criteria for listing anywhere else they would not be able to follow it in this case.

Mr. Wallace noted that another alternative, not recommended by staff, would provide that simply being listed would be the scope of the exception. If the Commission wished to retain the alternate standard in that section, staff would do parallel corrections to each of the alternate standards.

Chairman Getman summarized that, if a person had $25,000 invested in an entity that is actually listed, the exception would apply under option 2(c). If it is not actually listed on the NYSE, the exception would not apply.

Mr. Glick confirmed her understanding of option 2(c), but noted it was not one that staff recommended. Staff recommended option 2(b), which provides that, if the entity is not listed but meets the criteria for listing on the NYSE, then the exception would apply.

There was no objection to the staff recommendation.

Item #15. Executive Director's Report.

Executive Director Mark Krausse presented background information regarding the 2001/2002 fiscal year (FY) budget, noting that it began with $6.5 million. It was reduced twice (for a total of $310,000) through administrative overhead budget cuts. The Department of Finance (DOF) requested a 20% reduction for the 2002/03 FY, which would be an additional $1.3 million reduction. The cuts made during the 01/02 FY reduced everything possible in administrative overhead. Therefore, the 02/03 FY reductions would have to involve cuts in programs, and DOF has suggested that agencies consider program cuts. The memorandum submitted by the Chairman and the Executive Director identified potential areas for reduction. Staff requested public comment and input from the Commissioners regarding priorities for the reductions.

Mike Martello, City Attorney for the City of Mountain View, and speaking for the League of California Cities (the League), explained that this was an important issue to city attorneys. He stated that the League wanted to support the Commission. He noted that California experienced a similar budget crisis about ten or twelve years ago, and cities believe that the budget was balanced on the backs of cities. During the current state budget problems, the Governor has said that he would not take money from the cities. The League was concerned that, if they were to tell the Governor that the FPPC should not be cut, the Governor might take some of their budget monies to support the FPPC. Instead, they decided to find other ways to support the FPPC.

Mr. Martello explained that cuts in programs will hurt cities. Since most cities do not have in-house attorneys, the telephone advice the FPPC provides is very important. He stated that the 21-day turnaround time should be kept, but suggested that the applicant or the city attorney could certify that there is some urgency to an issue in order to help prioritize the advice letters, and he discussed the timeframes city attorneys have to deal with.

Mr. Martello noted the suggestion that city attorneys not call the FPPC for help with the eight-step analysis until they have tried to use it. They should call when they get stuck in that analysis. City attorneys noted that the AG's office provides faster phone service to city clerks and county counsels, thus encouraging people to go through their local officials first to find answers. He suggested the FPPC could do the same with the eight-step process.

In response to a question, Mr. Martello stated that city attorneys prefer to have the emphasis on formal advice letters, rather than informal advice letters. The key issues to the city attorneys were the 21-day turnaround time on formal advice letters and telephone advice.

Mr. Martello suggested that the FPPC's 800 telephone line could be eliminated and persons needing help could pay for their phone call. He noted that the city attorneys believed that FPPC staff was thorough and willing to research questions posed on the telephone lines, and that they considered it a valuable service.

Mr. Martello noted that the FPPC has many regulation hearings that few people attend. He explained that cities and counties pass more important laws much more quickly. FPPC staff works hard to include the public, but there are not a lot of people responding.

Chairman Getman responded that she had tried to eliminate the pre-notice hearings for regulations during her first year with the FPPC. However, there was an outcry from the public and the pre-notice hearings were retained.

Mr. Martello stated that, if an issue is expected to be controversial, they will have a study session on the issue, then it goes up for formal adoption. The hearing can then be continued to another meeting if necessary.

Commissioner Swanson noted that cities deal with issues through advisory boards that filter the issues.

Mr. Martello agreed that some cities do, but that the Planning Commission in his area makes no final decisions.

Chairman Getman noted that the FPPC's interested person's (IP) meeting was the equivalent of a study session. When the IP meetings are not utilized, the discussions are made at the Commission meetings, which is inefficient.

Mr. Martello suggested that the FPPC charge the public for their publications.

Chairman Getman stated that any monies received for publications go to the General Fund.

Mr. Martello stated that the city attorneys believe that the ability to get information online was enough.

Mr. Martello suggested that the Commission charge fees for seminars. Specifically, the clerk's training program is very important and an excellent program, and he did not believe anyone would object to paying for it. He believed that people would be willing to pay for the candidate's training program also. Mr. Martello explained that the amount to be charged should cover all overhead, including the salaries of the presenters. He acknowledged that video training can be helpful, but that personal contact by the candidates and clerks with the staff of the FPPC can be very beneficial.

Mr. Martello supported the Public Education Unit when it began. He noted that the League has revitalized a nonprofit group for ethics in public government. They are trying to work with the AG and the FPPC. He noted that they have learned to have higher standards in their ethics training programs.

Mr. Martello stated that the city attorneys did not support ceasing to enforce Chapter 7 on local public officials. In a recent case that Mr. Martello referred to the local district attorney, it became clear to him that the local enforcement officials did not have enough knowledge of the PRA to prosecute successfully. The city attorneys believed that enforcement of the PRA would be better handled by the FPPC.

Mr. Martello explained that the League was going to try to calendar a discussion to find ways to support the Commission with the governor's office, at their fall meeting.

Chairman Getman stated that the FPPC would be glad to make staff available to answer any questions that would help them in their effort.

In response to a question, Mr. Martello stated that the voters keep giving the FPPC new rules, and that, instead of cutting the budget, he believed that the FPPC needs more money. The FPPC's regulatory process of the last two years has made them aware of how little education and access people have to getting answers to their questions regarding the PRA. The Public Education Unit was long overdue, and people needed more of that help rather than less.

Chairman Getman asked the Commissioners for where they thought the 20% cuts could come from. She did not believe that the FPPC could continue providing the services it currently provides with 20% less resources.

Commissioner Downey stated that he was not comfortable selecting cuts based on the memorandum, noting that he needed more input. The reductions would be of enormous impact on the Commission. The DOF imposed deadlines for these decisions, and Commissioner Downey asked whether the Executive Director, with help from staff, could outline a more

detailed analysis of the pros and cons of the reduction options, and present them to the Commission for consideration at the October Commission meeting.

Chairman Getman noted that the Commission should give staff some guidance, because it takes an enormous amount of time to put together the details of budget cuts. Staff must provide DOF with an indication of which programs could be cut in September. Once that indication is made to DOF, the Commission could still allocate the remaining money as the Commission chooses.

Chairman Getman discussed the proposed possible cuts posed in the memo. She asked whether the public outreach programs should be cut equally with enforcement programs, or whether one should be cut more than the other, noting that those types of questions must be answered at the current meeting. Once those decisions have been made, then allocation of remaining monies could be done later.

Mr. Krausse noted that the City of San Francisco Ethics Commission sent a letter in support of keeping the telephone services provided by Technical Assistance Division. While they believe that the outreach and training programs are very helpful, the telephone services are more important.

Chairman Getman pointed out that the telephone services were cut during budget cuts of the early 1990's, and were restored since then.

Commissioner Downey suggested that those services be compared with other options, such as cutting back the Commission's meeting schedule, or ceasing enforcement of Chapter 7. He did not know how much of a savings each of those items would mean, however, and noted that it would be important to know those amounts in order to make the decisions.

Commissioner Swanson stated that the Commission should identify what is most important. She believed that the Commission must continue to provide information and help to the public, noting that it is hard to comply with the PRA if people do not understand it, and local candidates often do not have the resources to hire staff to handle PRA issues. Commissioner Swanson also discussed the need to continue enforcement of the PRA. She noted that Proposition 34 presented new and creative ways to beat the system, and a strong enforcement process was essential to the work of the Commission. She believed that Legal Division was also necessary, and supported the concept of charging fees for the services provided by the FPPC.

Commissioner Swanson suggested that a letter be sent from the Chairman and the Executive Director of the FPPC to DOF, explaining that the FPPC's situation was unusual. She suggest that, when budget problems occurred in local jurisdictions, prisoners are not let out of the local jails first in the budget cutting process. That should be the last place for the budget cuts. The Commission should not just do what DOF instructs, but should tell DOF what steps it can take to make budget cuts, and then advise them that additional cuts cannot be made if the agency is to remain effective. She did not agree that the cuts requested by DOF should automatically be adhered to, and thought the FPPC should fight them.

Mr. Krausse responded that staff would be working to fight the cuts. He explained that staff must, by September 12, 2002, provide DOF with the potential 20% cuts, but noted that staff will be pushing very hard to argue that the FPPC should get considerably less cuts, if any at all.

Chairman Getman noted that staff has already been arguing its case with DOF.

Commissioner Swanson noted that the FPPC brings in a lot of money.

Mr. Krausse agreed, but noted that the money goes into the General Fund. The agency's contributions to the General Fund can be used to argue the Commission's case with DOF, noting that cuts to the agency will result in a reduction to General Fund monies.

Commissioner Downey opined that the most important programs that the Commission has are educational, including the hotline and other TA functions. He pointed out that the more information that is available to the public, the less likely enforcement actions will be necessary, noting that most violations are inadvertent. He encouraged finding ways to reduce some of the ministerial tasks, such as late filed SEI's, by shifting responsibility for enforcement of those violations to local jurisdictions.

Chairman Getman argued that the number of Commission meetings should not be cut because the decisions will still get made, but not necessarily by the Commission and not in public. She suggested that the regulation calendar could be cut, leaving only those regulations essential to change because of a change in the law. Meetings for regulations could include one prenotice discussion and one adoption discussion and public input for the regulations would have to be done at those meetings. That would cut down on the amount of legal work without cutting down on the Commission's ability to make the final decisions.

Chairman Getman suggested that the streamlined enforcement programs have accomplished the goal of getting people's attention. The Commission could, instead of pursuing every late filing, focus on those violations that are more egregious, involving bigger dollar amounts, prior violations, or some indication that the violations are more than first-time, inadvertent mistakes. That way, the programs could be kept, but the thresholds for enforcement would be raised. She agreed that enforcement resources must be kept for money laundering, significant conflicts of interest, and deliberate non-filings or late-filings.

Chairman Getman noted that the telephone advice line serves 50,000 people a year, at relatively little cost. The seminars serve a far fewer number of people at a much greater cost. She suggested that some seminars could be eliminated, and staff could conduct seminars in Sacramento instead. She agreed that the closer contact with the public in their communities can be beneficial, but explained that it was more important to retain the telephone advice program.

Chairman Getman did not know the exact dollar savings of her suggestions, but noted that it would involve savings and that, with this as guidance, staff could develop more detailed cost analysis.

Mr. Krausse stated that he could prioritize the cost savings by setting up a ranking system consisting of ranks one, two and three. Rank one would involved the least savings, such as paper savings, and rank three would involve bigger savings, such as program type cuts. It will take time to develop the actual dollar figures of the savings.

Mr. Krausse explained, as an example, that the SEI filing officer function and code review function were handled at the local level when the PRA first passed. However, it was determined that a conflict existed when the local officials served as filing officers for their employers, and the FPPC took over that function. The Commission must decide whether or not the conflict is important enough to keep that function at the FPPC.

The Commissioners discussed filing procedures at the local level.

Chairman Getman noted that the Commission cannot save everything, and that the Commission may have to turn some of the work back to local agencies.

Commissioner Swanson stated that some of the issues might be resolved with the help from the League. She was concerned that abandoning cities would transform the FPPC into an enforcement agency only for large cases or for state elected officials. She believed that would result in the loss of effectiveness. She discussed the importance of local level elections.

Mr. Krausse explained that the Commission must do two things: comply with the DOF's request by submitting a plan to reduce the budget by 20%, and fight to keep it from happening. First, however, the Commission must develop priorities.

Chairman Getman asked the Commission whether to consider cutting enforcement, public education and outreach services proportionally.

Commissioner Knox responded that the Commission's job was to set priorities, and that they should not consider equal proportional cuts.

Mr. Krausse noted that the Commission's guidance in setting priorities is helpful to staff. As an example, if the agency no longer served as filing officer for the Legislature, multi-county agencies, and other entities, the Commission might come up with savings that would be roughly the same as local SEI filings and conflict of interest enforcement costs.

Commissioner Knox responded that, given the choice of the two, he would prioritize enforcement functions over the functions of serving as filing officer. The highest priority, he noted, is to be accessible to those who call to ask how to comply with the law.

Commissioner Downey agreed that cuts should not be made proportionally, but that priorities should be established. The Commission's function is to promote compliance with the PRA. The best way to do that is through education, because the vast majority of people want to comply.

Commissioner Knox stated that staff should not travel to other areas to conduct seminars, but should conduct seminars in Sacramento. Seminars could be held once a year, instead of five times a year. He believed that more important enforcement cases should be identified for prosecution. Eliminating enforcement of local officials or expedited enforcement programs could be considered. Cases that can be prosecuted by someone else could be eliminated.

Chairman Getman responded that the budget cuts of the 1990's included raising the criteria for intake of enforcement cases. The alternative would be to eliminate entire areas of enforcement or entire enforcement programs.

Commissioner Knox stated that it would be unfortunate to enforce all of the laws with respect to conflict of interest, but not those laws with respect to campaign reporting. There should be a way to enforce all of the laws, but prosecute the more important cases in the different categories.

Commissioner Swanson agreed, but noted that it is very important to assist cities. The FPPC travel budget of $75,000 could be eliminated by providing the seminar information in other ways, such as through the Internet. She believed that the expedited programs were extremely useful and suggested that they be increased.

Chairman Getman noted that Pennsylvania officials imposed an internal deadline on enforcement cases, which required staff to handle the cases in a more expedited manner. Enforcement actions could still be brought, but every violation might not be pursued.

In response to a question, Mr. Russo noted that, historically, enforcement division has established higher intake criteria when dealing with budget cuts in the past. In this way, enforcement is still involved in all areas of PRA violations rather than ignoring laws. It also means that some cases may not be prosecuted and staff will be put in the difficult position of making some hard calls and having to tell complainants that budget constraints do not allow staff to pursue enforcement of some violations.

Commissioner Swanson noted that time limits could be given to respondents to respond to staff.

Commissioner Downey noted that sending litigation cases to the Attorney General's office was a good idea, since the Commission gets free legal representation from them.

Chairman Getman pointed out that staff spends a lot of time on those cases to make sure that the FPPC interpretation of the law is represented. The Commission would give up the ability to make sure that the results reflect the Commission's interpretation of the PRA. She agreed that it was a very easy way to cut the budget.

Commissioner Knox noted that it may be a choice of giving that up or not enforcing some parts of the law.

Chairman Getman added that the Commission's interpretation of the law can be accomplished through regulations and opinions.

Commissioner Knox stated that reducing the regulatory calendar would be an appropriate place to make budget cuts.

In response to a question, Mr. Krausse stated that the dollar savings to reducing the regulatory calendar would be at least a level two rating.

Commissioner Downey stated that he thought the regulations, the pre-notice hearings and the IP meetings were necessary.

Commissioner Knox noted that there was a lot of guidance in the regulations. Most areas of the law involve dealing with statutes and case law. Lawyers and candidates could still turn to the PRA for guidance if the regulations have not been developed.

In response to a question, Mr. Krausse stated that it is considerably cheaper to provide publications on the Internet rather than on paper, noting that the costs for paper, reproduction, mailing and staff time would be saved if it was available only on the Internet.

Chairman Getman noted that there would be some initial outlay in computer costs. As an example, the agenda could be sent by a "list-serve" e-mail system. However, the FPPC would need to get the computer capability to handle "list serves." It would involve an initial capital outlay. Additionally, she noted that there are some people who cannot download the information from the Internet.

In response to a question, Administration Chief Bob Tribe noted that annual postage costs are about $40,000.

Commissioner Swanson suggested that the League and other agencies in the state might work to make the information available to smaller jurisdictions who do not have computer capabilities.

Mr. Krausse agreed that it would be helpful, but noted that, ultimately, the FPPC must provide the information according to the Public Records Act. If the Commission defaults to the Internet, the Commission could still provide a paper copy in exceptional circumstances.

Chairman Getman noted that the Federal Election Commission (FEC) is moving in the same direction.

In response to a question, Chairman Getman explained that the Commission currently provides a copy of the Commission meeting agenda for a cost of $100 per year.

Mr. Krausse noted that the Commission is required to send the agenda upon request by the Public Records Act. The $100 agenda subscription monies are deposited in the General Fund.

Mr. Krausse noted that some of the suggested changes under discussion will require legislative changes.

In response to a question, Mr. Tribe stated that maintaining the technical advice in Sacramento, declining to enforce some things, and reducing the regulatory calendar would probably not require legislative changes.

Mr. Krausse pointed out that changing the deadlines for the 21-day letters would require a legislative change.

Chairman Getman pointed out that elimination of the SEI filings within the FPPC would require legislative changes. Staff may bring that back to the Commission requesting authorization to seek a bill making that change. She noted that the legislature may not approve the request for a bill.

Commissioner Knox suggested that it could be tried, noting that it may help the agency get more money.

Mr. Krausse noted that turning over the SEI filings to local jurisdictions could create conflicts within those jurisdictions.

Chairman Getman responded that at least it could be enforced if turned over to local jurisdictions. She asked Mr. Martello whether the League could work with local officials to make sure that they understand their obligations under the PRA when the Commission receives complaints regarding actions that generally result in a warning letter from the FPPC. That would help with the FPPC workload, and may be more appropriately handled at the local level.

Mr. Tribe explained that in the past, as vacancies occurred during difficult budgetary times, employees transferred to "safer" agencies and the resulting FPPC vacancies would be used as part of the budget cut. This time, however, those vacancies will probably be lost totally separate from the proposed 20% reduction. Better than 80% of the budget is salaries, and it will be difficult to come up with $1.3 million.

Chairman Getman stated that the League and the Legislature may be able to help the FPPC by helping find positions for the highly qualified staff of the FPPC where their knowledge could be put to good use. She suggested that the League's "Ethics In Public Government" programs and the Rules and Ethics committees of the Legislature could benefit by hiring some FPPC staff.

Commissioner Swanson suggested that the lease for the building should be discussed with the landlord in an effort to negotiate a lower fee. When everyone else is taking cuts, the landlord should also take a cut, even though there is a lease. If the landlord does not lower the rates the FPPC should remember that when it is time to renew the contract.

Chairman Getman noted that the FPPC is actively looking for subtenants in the building.

In response to a request from the Chairman, Commissioner Knox outlined again his suggestions for priorities, including maintaining the ability to provide advice and counsel to those who call in

or come to Sacramento, giving up the outreach program when it involves travel, and eliminating publications that are not necessary. Secondly, he asked staff for advice on the kinds of enforcement actions the FPPC currently brings, looking toward eliminating the less important cases depending on the amount of money involved and the gravity of the offenses. Thirdly, he suggested reducing the regulatory calendar, and asked staff to develop more specific information regarding the amount of savings that would be accomplished. He further suggested that the Commission reconsider the regulation hearing process.

Commissioner Downey did not agree with reducing the regulatory calendar.

Chairman Getman suggested that the Commission explore legislation allowing the FPPC to give up the filing officer program.

In response to a question, Chairman Getman suggested that the Commission not give up the 21-day requirement for formal advice, but could give up informal advice letters. She explained the informal advice letter process, noting that it does not confer immunity, but gives general advice that is also available through the telephone line or in the publications. It would allow Legal Division to use their scarce resources on the advice letters that confer immunity.

Commissioner Downey noted that it would not require a legislative change.

In response to a question, Chairman Getman stated that litigation should be given up.

Commissioner Knox stated that litigation could be handled by the Attorney General.

Commissioner Swanson added that a reduction in the lease contract should be explored.

Chairman Getman stated that the priorities outlined by the Commissioners were a good start, and that staff could use that to propose reductions to DOF. It would allow staff to present a more detailed analysis of the budget cuts at the October meeting for further review.

Commissioner Swanson asked that staff determine the costs of administrative overhead. If that can be done in a broad way, DOF could be notified of the costs and could be told that the FPPC has never attached those costs to the FPPC's real costs. The letter could note that the FPPC intended to do that from now on.

Mr. Krausse explained that it could require a legislative change, and would at least require a change at DOF if the FPPC decides that outreach and training be done for a fee, and that the fee be recovered by the agency.

Commissioner Swanson added that staff should compute into those costs all costs involved. There must be an understanding that we still have to pay electricity, water, lights, and space.

Mr. Krausse pointed out that out of a $6.5 million budget, $1 million is overhead, and half of the overhead is rent. DOF is asking for $1.3 million in cuts, and the FPPC does not have even $1

million in non-staff salary and expenses. The overhead is less than the amount that must be cut, so program cuts must be made. He believed that DOF was aware of that because they asked for program cuts, but noted that staff will be happy to bring it to their attention.

Chairman Getman explained that the cuts for the last year were designed to come out of overhead and not programs. This year's budget cuts are different.

Commissioner Swanson noted that the FPPC will do everything it can to be creative and mindful of DOF's request, but the FPPC must act quickly because of the November deadline. She suggested that there be more discussions after November.

Chairman Getman stated that Executive staff will figure out what this will look like in terms of organizational and structural changes. They may find new ideas to present to the Commission at the next meeting, and asked for flexibility from the Commission to do that.

Commissioner Swanson responded that staff could provide valuable input because they work with it every day. The organization should work as a team to develop good ideas that will benefit the whole organization and accomplish the things that the Commission discussed.

Scott Hallabrin, representing the Assembly Ethics Committee, pointed out that the FPPC could take advantage of a statute that would allow the FPPC to accept donations and grants. He believed that there may be organizations that would be willing to donate.

Item #14. Legislative Report

Mr. Krausse reported that SB 879 (Brulte) would extend the Internet Political Practices Commission. He noted that the Commission met only once, and the author of the bill asked that the FPPC take a support position. The bill is currently on the Governor's desk.

Mr. Krausse noted that staff had no recommendation on the bill because, typically, if a bill does not amend the PRA the Commission has not taken a position on it. However, the Internet Commission may come up with recommendations to amend the PRA, so the FPPC may wish to take a position.

Commissioner Downey supported the bill.

Chairman Getman noted that the FPPC has deferred decisions to the Internet Commission, and she supported extending the Commission so that they could address those issues.

There was no objection to supporting SB 879.

Mr. Krausse stated that AB 1791 (Runner), that would change the filing deadline from 30 days to 20 days and that the Commission fought against, died.

In response to a question, Mr. Krausse stated that the Florez bill died in the Senate Elections Committee. It was one of only 2 PRA amendment bills to die in that Committee this year. The Committee suggested that the bill be brought back when the Committee can give it more consideration.

Mr. Krausse stated that AB 1797 (Harmon), which would delineate how a public official disqualified himself or herself, was signed by the Governor.

Mr. Krausse stated that staff was able to get a bill introduced addressing cumulative contributions, but that the Assembly Minority Caucus opposed any rule waivers so the bill was not allowed to be heard. He noted that staff would be watching the November election to monitor whether the disclosure of cumulative contributions is a problem. Staff could come back with legislation next year to address any identified problems.

Mr. Krausse reported that SB 1975 (Johnson), which would move the state primary back to June, would impact the FPPC filing schedules and the streamlined enforcement programs. It might mean that staff could not bring enforcement actions for the primary before the November election. The bill is on the Governor's desk with a $32 million cost over four years.

The meeting adjourned to closed session at 4:00 p.m.

The public meeting reconvened at 5:34 p.m.

Chairman Getman announced that the closed session meeting was just adjourned and formally adjourned the public session.

Dated: October 4, 2002

Respectfully submitted,

_____

Sandra A. Johnson
Executive Secretary

Approved by:

_____

Chairman Getman